

Smart retrial bid cites juror's con

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Defense alleges attempt to sell tape recordings

EXETER, N.H. — A juror in the Pamela Smart accomplice-to-murder trial made tape recordings based on recollections and notes as the trial progressed and recently offered to sell them for \$25,000 to Smart's new defense team, her attorney charged yesterday as he pressed for a new trial.

The juror was "sitting on that jury for personal gain," J. Albert Johnson, Smart's Boston attorney, said yesterday.

The charge is the basis of one of two

motions for a new trial filed yesterday in Rockingham County Superior Court. In making the motions, the defense seeks to overturn Smart's conviction as an accomplice to the May 1, 1990, murder of her husband, Gregory.

In addition to the misconduct motion, Johnson filed a claim of jury impairment, which charges that Judge Douglas Gray erred in not granting a change of venue for the highly publicized trial, in not grant-

ing a continuance to allow publicity to abate, and in not sequestering the jury during the trial or deliberations.

"Pam Smart's conviction was an outrage," Johnson said at a news conference on the courthouse steps after he filed his motions. The lawyer called the conduct of the trial "the worst I have seen in my legal career."

Linda Wojas, Smart's mother, said she was alarmed to learn "that a juror sat with

Pam's life in her hands. It was money, not justice."

"Stay strong, Pam," Johnson said, in hopes her daughter would survive a news conference on television from the Hampshire State Prison where she is serving a 10-year sentence.

Smart was convicted of murdering her 15-year-old husband, who was murdered in the Smarts' Derry condominium.

Lawyer for Smart says juror tried to sell tapes

■ SMART

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Yesterday's news conference was a carefully orchestrated event hosted by a defense team that said media coverage tainted the trial. But Johnson denied any irony in his calling out the media yesterday.

■ A TV movie on the Pamela Smart case is being filmed in Charlotte, N.C. Page 25.

He said the news media could not be blamed for its heavy coverage of the trial, but that the court could be blamed because it did not sequester the jury. He said Gray did not "protect the defendant from what the jurors might hear" or read in the press.

Johnson called this "the most egregious error of all, the failure to sequester the jury even during deliberations."

Yet after he recounted the three points of his jury impairment motion, he told the gathering there was "one more outrage that has occurred."

A woman juror, whose name cannot be disclosed under court order, "was so overcome by greed, avarice and the need for personal gain" that she made tape recordings based on recollections and notes, John said. Though the judge later ordered all notes destroyed, he said, the juror kept the tapes.

Johnson said later yesterday in an interview that since he has not been allowed to hear the tapes, it is not clear how much of the trial they cover, though he said a source has told his office the tape recordings cover the whole trial, which could include jury deliberations.

Tapes offered for \$25,000

He said that a friend of the juror first approached his law firm to say

that the tapes - which the friend said were originally made in hopes of a movie or print contract - were available and might be of use to the defense in an appeal. A New Hampshire lawyer, also unidentified under court order, later approached the law office on behalf of the juror and said the tapes could be had for \$25,000, Johnson said. The juror, he said, fell on hard times last winter.

Johnson said he reported the offer to the New Hampshire attorney general's office and to Gray last Wednesday. He maintained yesterday that the juror's actions were illegal, based on her court-sworn pledge to remain impartial.

But Paul Maggiotto, the assistant attorney general who prosecuted Smart, disputed this assertion yesterday, though he would not confirm the existence of the tapes. He said, however, that such a taping by a juror would not be illegal, but rather might be weighed to determine

whether there was "misconduct to an extent that the juror could not remain impartial during the course of the trial."

"We have seen nothing that could force a new trial," Maggiotto said.

According to Johnson, Gray conducted his own hearing into the tapes charges last week and took no action on an emergency motion for a new trial by Johnson. Johnson said in the interview he is "treating the inaction as a denial."

At the news conference, Johnson called Gray's hearing "a farce, a sham hearing." He said the defense was not allowed to talk to the juror, that the defense was not allowed to hear the two tapes, and that it is apparent from the transcript that the judge did not ask the juror about her motivation.

Yesterday's motions for a new trial are separate from 34 points of appeal on legal grounds already filed. A member of the defense team said that the number is likely to grow.

Hearings on yesterday's motions are scheduled for Aug. 19 in the Exeter courtroom.